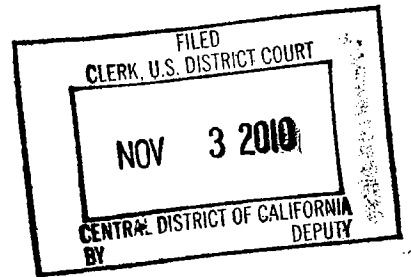


MILBERG LLP  
JEFF S. WESTERMAN (SBN 94559)  
jwesterman@milberg.com  
SABRINA S. KIM (SBN 186242)  
skim@milberg.com  
One California Plaza  
300 S. Grand Avenue, Suite 3900  
Los Angeles, California 90071  
Telephone: (213) 617-1200  
Facsimile: (213) 617-1975



REESE RICHMAN LLP  
MICHAEL R. REESE (SBN 206773)  
mreese@reeserichman.com  
875 Avenue of the Americas, 18th Floor  
New York, New York 10001  
Telephone: (212) 579-4625  
Facsimile: (212) 253-4272

*Attorneys for Plaintiff*

[Additional Counsel on Signature Page]

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

MITCHELL LEONG, individually  
and on behalf of all others similarly  
situated,

Plaintiff,

v.

MYSPLACE, INC.

Defendant.

CASE NO.

**CV10-8366** <sup>Attm</sup> (Ex)

**CLASS ACTION**

**COMPLAINT**

**JURY TRIAL DEMANDED**

**COPY**

1 Plaintiff Mitchell Leong ("Plaintiff" or "Leong") brings this action  
2 individually and on behalf of a Class of all persons similarly situated in the United  
3 States against MySpace, Inc. ("MySpace" or "Defendant").

4 This case arises from Defendant's intentional and knowing transmission of  
5 data to outside advertising companies that could be used to identify the users,  
6 without the users' knowledge or consent, in violation of federal and state laws and  
7 in breach of MySpace's agreements with its users. Plaintiff and the Class seek  
8 damages and equitable relief. Plaintiff alleges the following upon personal  
9 knowledge as to his own acts, and upon information and belief based on the  
10 investigation conducted by Plaintiff's Counsel, as to all other matters:

11 **FACTUAL ALLEGATIONS**

12 1. MySpace operates a social network platform that allows members to  
13 create personal profiles online, including photos and journals, which they can share  
14 with designated "friends." MySpace's website address is found at  
15 <http://www.myspace.com>. MySpace is owned by News Corp. which, in public  
16 filings, reported that MySpace had nearly 70 million unique U.S. users and 101  
17 million unique global users in June 2010.

18 2. To become a MySpace member, website visitors must first join  
19 MySpace by registering and agreeing to MySpace's "Terms of Use Agreement"  
20 ("Agreement") and Privacy Policy. Once registered, users may post personal  
21 information, including but not limited to, name, address, phone number, email,  
22 gender, relationships, photographs, videos, and interests.

23 3. Each MySpace Member has a unique user ID that is a public part of  
24 all MySpace profiles, and anyone can use an ID number to find a person's name on  
25 a standard web browser.

26 4. MySpace encourages users to share personal information by making  
27 the following representations:  
28

1 (a) "When you voluntarily provide PII [personally identifiable  
2 information] to MySpace, we will make sure you are informed about who is  
3 collecting information, how and why the information is being collected and the  
4 types of uses MySpace will make of the information to the extent it is being used  
5 in a manner that differs from what is allowed pursuant to this privacy policy."

6 (b) "At the time you provide your PII, MySpace will notify you of  
7 your options regarding our use of PII (See "Choice" below). Except as described  
8 in this Privacy Policy, MySpace will not share your PII with third parties unless  
9 you have given MySpace permission to do so (See "Use" below)."

10 (c) "Except as described in this Privacy Policy, MySpace will get  
11 your permission before we use PII in a way that is inconsistent with the purpose for  
12 which it was submitted or share your PII with third parties that are not affiliated  
13 with MySpace."

14 (d) "MySpace uses commercially reasonable administrative,  
15 technical, personnel and physical measures to safeguard PII and credit card  
16 information in its possession against loss, theft and unauthorized use, disclosure or  
17 modification."

18 5. These assurances were all false. In fact, MySpace revealed personally  
19 identifiable information to outside advertisers without MySpace users' knowledge  
20 or consent, in violation of its own Privacy Policy. On May 21, 2010, the *Wall*  
21 *Street Journal* published an article stating that MySpace had been sending user  
22 names or ID numbers that could direct advertisers back to a profile page full of  
23 personal information. The article cited a paper prepared by researchers at AT&T  
24 Labs and Worcester Polytechnic Institute in which the authors reported that there  
25 were "multiple ways" outside companies could access MySpace user data.  
26 MySpace admitted the violation and sought to minimize its importance, but  
27 nevertheless, told the *Wall Street Journal* that MySpace was "currently  
28

1 implementing a methodology that will obfuscate the 'FriendID in any URL that is  
2 passed along to advertisers.'"

3 6. MySpace Co-President, Mike Jones, stated in a May blog post that,  
4 "MySpace's core value of allowing self-expression and representation of yourself  
5 remains true, without the fear that your unique contribution to MySpace will be  
6 unknowingly used for an alternative purpose,"

7 7. On October 23, 2010, the *Wall Street Journal* published an article  
8 entitled, "MySpace, Apps Leak User Data: *Site Sends Personal IDs When Ads are*  
9 *Clicked, a Journal Investigation Finds.*" The article reported that, notwithstanding  
10 MySpace's pledge to discontinue the practice, MySpace still was transmitting user  
11 IDs, as were MySpace applications including BitRhymes Inc.'s TagMe,  
12 Wonderhill, Inc.'s GreenSpot, and RockYouPets. The advertising companies  
13 being sent the data include Google Inc., Quantcast Corp., and Rubicon Project,  
14 according to the article.

### 15 JURISDICTION AND VENUE

16 8. This Court has subject matter jurisdiction pursuant to the Class Action  
17 Fairness Act of 2005, 28 U.S.C. § 1332 (a) and 1332 (d), because the amount in  
18 controversy exceeds \$5,000,000.00 exclusive of interests and costs, and more than  
19 two-thirds of the members of the Class are citizens of states different from that of  
20 Defendant. This Court also has federal question jurisdiction as this Complaint  
21 alleges violations of the Stored Communications Act (18 U.S.C. § 2701 *et seq.*)  
22 (the "SCA").

23 9. Venue for this action properly lies in this District pursuant to 28  
24 U.S.C. § 1391 as MySpace's principal executive offices and headquarters are  
25 located in Beverly Hills, California.

### 26 PARTIES

27 10. Plaintiff Mitchell Leong is an individual who resides in Burlingame,  
28 California, and is a member of MySpace's social networking website. During the

1 Class Period he has clicked on at least one third-party advertisement that appeared  
2 on MySpace's website.

3 11. Defendant MySpace is located at 407 North Maple Drive, Beverly  
4 Hills, California. MySpace conducts business throughout California and the  
5 United States.

6 **CLASS ACTION ALLEGATIONS**

7 12. Plaintiff brings this action on behalf of himself and all other persons  
8 similarly situated pursuant to Fed. R. Civ. P. 23 defined as follows: All MySpace  
9 users who reside in the United States and who, any time after November 3, 2006,  
10 (i) interacted with MySpace's authorized applications or (ii) clicked on a third-  
11 party advertisement displayed on MySpace's social networking website.

12 13. Excluded from the Class are Defendant; any parent, subsidiary, or  
13 affiliate of Defendant or any employees, officers, or directors of Defendant; legal  
14 representatives, successors, or assigns of Defendant; and any justice, judge or  
15 magistrate judge of the United States who may hear the case, and all persons  
16 related to any such judicial officer, as defined in 28 U.S.C. § 455(b).

17 14. **Numerosity**. The Class members are so numerous and dispersed  
18 nationwide that joinder of all members is impracticable. Upon information and  
19 belief, the Class members number in the hundreds of thousands, if not millions.  
20 The exact number of Class members is unknown, but can be determined from  
21 Defendant's computerized and other records. Plaintiff reasonably estimates and  
22 believes that there are thousands of persons in the Class.

23 15. **Commonality**. There are numerous and substantial questions of law  
24 and fact that are common to all members of the Class, which predominate over any  
25 question affecting only individual Class members. The members of the Class were  
26 and continue to be subjected to the same practices of the Defendant. The common  
27 questions and issues raised by Plaintiff's claims include: whether Defendant shared  
28 Plaintiff's and the Class's personal information with third-party advertisers and

1 Internet tracking companies; whether Plaintiff consented to Defendant's sharing of  
2 Plaintiff's personal information with third-party advertisers and Internet tracking  
3 companies; whether Defendant violated its own Terms and Privacy Policies by  
4 sharing of Plaintiff's personal information with third-party advertisers and Internet  
5 tracking companies; whether Plaintiff and the Class have been damaged as a result  
6 of Defendant's alleged violations as alleged herein; and, if so, the appropriate relief  
7 for Defendant's violations; whether Defendant has violated the SCA and, if so, the  
8 appropriate measure of damages and remedies against Defendant for any violations  
9 of the SCA; whether Defendant breached its contract, and if so, the appropriate  
10 measure of damages and remedies against Defendant for such breach; whether  
11 Defendant breached the covenant of good faith and fair dealing, and if so, the  
12 appropriate measure of damages and remedies against Defendant for such breach;  
13 whether Defendant has been unjustly enriched as a result of its unlawful conduct,  
14 and, if so, whether Defendant should disgorge inequitably obtained money that it  
15 has been unjustly enriched by; and, the nature and extent of any other remedies,  
16 and injunctive relief, to which Plaintiff and the Class are entitled.

17       16. **Typicality**. Plaintiff's claims are typical of the claims of all of the  
18 other members of the Class, because his claims are based on the same legal and  
19 remedial theories as the claims of the Class and arise from the same course of  
20 conduct by Defendant.

21       17. **Adequacy**. Plaintiff will fairly and adequately protect the interests of  
22 all members of the class in the prosecution of this Action and in the administration  
23 of all matters relating to the claims stated herein. Plaintiff is similarly situated  
24 with, and has suffered similar injuries as, the members of the Class he seeks to  
25 represent. Plaintiff has retained counsel experienced in handling class action  
26 lawsuits. Neither Plaintiff nor his counsel have any interest that might cause them  
27 not to vigorously pursue this action.  
28

1       18. **Superiority**. A class action is superior to other available methods for  
2 the fair and efficient adjudication of the controversy, since individual joinder of the  
3 Class members is impracticable. Even if individual Class members were able to  
4 afford individual litigation, it would be unduly burdensome to the Courts in which  
5 the individual litigation would proceed. Defendant has subjected the Class to the  
6 same violations as referenced herein. Accordingly, class certification is  
7 appropriate under Rule 23 because common issues of law and fact regarding  
8 Defendant's uniform violations predominate over individual issues, and class  
9 certification is a superior method of resolving these claims. No unusual difficulties  
10 are likely to be encountered in the management of this action as a class action.  
11 Defendant acted and continues to act in a manner that is generally applicable to all  
12 members of the Class, making final injunctive relief appropriate.

13                                   **FIRST CAUSE OF ACTION**  
14                                   **(Stored Communications Act, 18 U.S.C. § 2701 *et seq.*)**

15       19. Plaintiff hereby incorporates by reference the allegations contained in  
16 all of the preceding paragraphs of this complaint.

17       20. MySpace provides an electronic communication service to the public  
18 *via* its social networking website. 18 U.S.C. § 2510 (15).

19       21. MySpace provides remote computing service to the public because it  
20 provides computer storage and processing services by means of an electronic  
21 communications system. 18 U.S.C. § 2711(2).

22       22. MySpace carries and maintains its members' MySpace profiles solely  
23 for the purpose of providing storage and computer processing services to its users.  
24 MySpace is not authorized to access this information for purposes other than  
25 providing storage and computer processing. 18 U.S.C. § 2702(a) (2).

26       23. A Member's MySpace profile and personal information as stored by  
27 MySpace are electronic communications within the meaning of 18 U.S.C. § 2510  
28 (12).



1       24. MySpace holds its members' MySpace profiles in electronic storage  
2 within the meaning of 18 U.S.C. § 2510 (17).

3       25. In relevant part, 18 U.S.C. § 2701 (a)(1)-(2) of the SCA provide that  
4 an offense is committed by anyone who: (1) intentionally accesses without  
5 authorization a facility through which electronic communication service is  
6 provided; or (2) intentionally exceeds an authorization to access that facility; and  
7 thereby obtains . . . [an] electronic communication while it is in electronic storage  
8 in such system.

9       26. MySpace intentionally exceeded its authorization to access and  
10 control confidential and private information relating to Plaintiff's and the Class's  
11 electronic communications in violation of 18 U.S.C. § 2701 *et seq.* of the SCA.

12       27. In relevant part, 18 U.S.C. § 2702(a) (1)-(2) of the SCA provides that  
13 a person or entity shall not: (1) . . . knowingly divulge to any person or entity the  
14 contents of a communication . . . ; and (2) . . . shall not knowingly divulge to any  
15 person or entity the contents of any communication . . . .

16       28. Section 2707 of the SCA provides for a civil cause of action and  
17 allows for damages, and declaratory and equitable relief.

18       29. MySpace knowingly, willfully, unlawfully, and intentionally without  
19 authorization divulged confidential and private information relating to Plaintiff's  
20 electronic communications in violation of 18 U.S.C. § 2701 *et seq.* of the SCA.

21       30. MySpace engages in the foregoing acts without obtaining the lawful  
22 consent of the user. 18 U.S.C. § 2702 (b) (3).

23       31. By engaging in the foregoing acts, MySpace knowingly divulges the  
24 contents of communication carried and maintained by MySpace on behalf of and  
25 received by transmissions from MySpace users in violation of 18 U.S.C.  
26 § 2702(a)(2).

27       32. Plaintiff and the Class are entitled to statutory damages of no less than  
28 \$1,000.00 (one thousand dollars) per violation. Because MySpace's violations



1 were willful and intentional, Plaintiff and the Class are entitled to recover punitive  
2 damages as provided by 18 U.S.C. § 2702 (c).

3  
4 **SECOND CAUSE OF ACTION**  
5 **(Conversion)**

6 33. Plaintiff hereby incorporates by reference the allegations contained in  
7 all of the preceding paragraphs of this complaint.

8 34. Plaintiff's personally identifiable information – including full name,  
9 email address, mailing address, telephone number, and credit card number – is  
10 valuable property owned by Plaintiff.

11 35. Defendant unlawfully exercised dominion over said property and  
12 thereby converted Plaintiff's and the Class members' respective personal  
13 information by providing it to third parties in violation of the Stored  
14 Communications Act, 18 U.S.C. § 2701 *et seq.*, and in violation of its contracts  
15 with Plaintiff and the respective class members.

16 36. Plaintiff and the Class were damaged thereby.

17 **THIRD CAUSE OF ACTION**  
18 **(Breach of Contract)**

19 37. Plaintiff hereby incorporates by reference the allegations contained in  
20 all of the preceding paragraphs of this complaint.

21 38. MySpace requires users to register only after agreeing to the MySpace  
22 Agreement and Privacy Policy. The Agreement and Privacy Policy together  
23 constitute a valid and enforceable contract between MySpace and its users.  
24 Plaintiff submits personally identifiable information to MySpace and its contract  
25 promises MySpace will not share this information with third-party advertisers or  
26 applications developers without Plaintiff's consent and the consent of each Class  
27 member, respectively.

28 39. The MySpace Privacy Policy states that MySpace will not divulge  
personally identifiable information to outside advertising companies without the

1 member's consent. Despite this promise, MySpace did in fact knowingly share  
2 users' personally identifiable information and non-anonymous user information  
3 with outside advertisers and application developers in violation of its own  
4 Agreement with its users.

5 40. Plaintiff never consented to the sharing of his personally identifiable  
6 information to third-party advertisers and/or application developers.

7 41. Plaintiff has performed his obligations under the contract.

8 42. MySpace materially breached its contractual obligations through its  
9 conduct as alleged herein, including its transmission of Plaintiff's personal  
10 information to third-party advertisers and application developers, as well as  
11 Plaintiff's user ID without consent.

12 43. Plaintiff and the Class have been damaged as a direct and proximate  
13 result of MySpace's breach of their agreements with Plaintiff and the Members of  
14 the Class. Plaintiff and the Class have been damaged in an amount to be proven at  
15 trial.

16 **FOURTH CAUSE OF ACTION**  
17 **(Breach of Implied Covenant of Good Faith and Fair Dealing )**

18 44. Plaintiff hereby incorporates by reference the allegations contained in  
19 all of the preceding paragraphs of this complaint.

20 45. Once Plaintiff agreed to use MySpace's social network website, he  
21 agreed to MySpace's Agreement and Privacy Policy, which constitute an  
22 enforceable contract.

23 46. A covenant of good faith and fair dealing, which imposes upon each  
24 party to a contract a duty of good faith and fair dealing in its performance, is  
25 implied in every contract, including the Agreement that embodies the relationship  
26 between MySpace and its members.

27 47. Good faith and fair dealing is an element imposed by common law or  
28 statute as an element of every contract under the laws of every state. Under the

1 covenant of good faith and fair dealing, both parties to a contract impliedly  
2 promise not to violate the spirit of the bargain and not to intentionally do anything  
3 to injure the other party's right to receive the benefits of the contract.

4 48. Plaintiff reasonably relied upon MySpace to act in good faith both  
5 with regard to the contract and in the methods and manner in which it carries out  
6 the contract terms. Bad faith can violate the spirit of the Agreement and may be  
7 overt or may consist of inaction. MySpace's inaction in failing to adequately  
8 notify Plaintiff of the release of personal information to outside advertisers and  
9 application developers evidences bad faith and ill motive.

10 49. The contract is a form contract, the terms of which Plaintiff is deemed  
11 to have accepted once Plaintiff and the Class signed up with MySpace. The  
12 contract purports to give discretion to MySpace relating to MySpace's protection  
13 of members' privacy. MySpace is subject to an obligation to exercise that  
14 discretion in good faith. The covenant of good faith and fair dealing is breached  
15 when a party to a contract uses discretion conferred by the contract to act  
16 dishonestly or to act outside of accepted commercial practices. MySpace breached  
17 its implied covenant of good faith and fair dealing by exercising bad faith in using  
18 its discretionary rights to deliberately, routinely, and systematically make  
19 Plaintiff's personal information available to third parties.

20 50. Plaintiff has performed all, or substantially all, of the obligations  
21 imposed on him under the contract, whereas MySpace has acted in a manner as to  
22 evade the spirit of the contract, in particular by deliberately, routinely, and  
23 systematically without notifying Plaintiff of its disclosure of his personal  
24 information to third-party advertisers. Such actions represent a fundamental wrong  
25 that is clearly beyond the reasonable expectations of the parties. MySpace's  
26 disclosure of such information to third party advertisers and tracking companies is  
27 not in accordance with the reasonable expectations of the parties and evidences a  
28 dishonest purpose.

1        51. MySpace's ill motive is further evidenced by its failure to obtain  
2 Plaintiff's consent in its data mining efforts while at the same time consciously and  
3 deliberately utilizing data mining to automatically and without notice providing  
4 user information to third-party advertisers and Internet tracking companies.  
5 MySpace profits from advertising revenues derived from its data mining efforts  
6 from Plaintiff and the Class.

7        52. The obligation imposed by the implied covenant of good faith and fair  
8 dealing is an obligation to refrain from opportunistic behavior. MySpace has  
9 breached the implied covenant of good faith and fair dealing in the Agreement  
10 through its policies and practices as alleged herein. Plaintiff and the Class have  
11 sustained damages and seek a determination that the policies and procedures of  
12 MySpace are not consonant with MySpace's implied duties of good faith and fair  
13 dealing.

14                                    **FIFTH CAUSE OF ACTION**  
15                                    **(In the Alternative, Unjust Enrichment)**

16        53. Plaintiff hereby incorporates by reference the allegations contained in  
17 all of the preceding paragraphs of this complaint.

18        54. By engaging in the conduct described in this Complaint, Defendant  
19 has knowingly obtained benefits from Plaintiff under circumstances such that it  
20 would be inequitable and unjust for Defendant to retain them.

21        55. Defendant has received a benefit from Plaintiff and Defendant has  
22 received and retained money from advertisers and other third parties as a result of  
23 sharing Defendant's members' personal information with those advertisers without  
24 Plaintiff's knowledge or consent as alleged in this complaint.

25        56. Plaintiff did not expect that Defendant would seek to earn money  
26 from third parties by using his personal information without his consent.

27        57. Defendant knowingly used Plaintiff's personal information without  
28 his knowledge or consent to earn money from third parties and had full knowledge

1 of the benefits it has received from Plaintiff. If Plaintiff had known Defendant was  
2 not keeping his personal information from third parties, he would not have  
3 consented and Defendant would not have made money from third parties.

4 58. Defendant will be unjustly enriched if Defendant is permitted to retain  
5 the money paid to it by third parties in exchange for Plaintiff's personal  
6 information.

7 59. Defendant should be required to provide restitution of all money  
8 obtained from its unlawful conduct.

9 60. Plaintiff and the Members of the Class are entitled to an award of  
10 compensatory and punitive damages in an amount to be determined at trial or to  
11 the imposition of a constructive trust upon the wrongful revenues and/or profits  
12 obtained by and benefits conferred upon Defendant as a result of its wrongful  
13 actions as alleged in this complaint.

14 61. Plaintiff and the Class have no remedy at law to prevent Defendant  
15 from continuing the inequitable conduct alleged in this complaint and the  
16 continued unjust retention of the money Defendant received from third-party  
17 advertisers.

18 **SIXTH CAUSE OF ACTION**  
19 **(In the Alternative, Promissory Estoppel)**

20 62. Plaintiff hereby incorporates by reference the allegations contained in  
21 all of the preceding paragraphs of this complaint.

22 63. Plaintiff and the Class submitted personally identifiable information to  
23 MySpace in detrimental reliance upon MySpace's clear promise that MySpace  
24 would not share the personally identifiable information with third parties without  
25 his consent and, as a consequence, Plaintiff and the Class suffered damages.  
26  
27  
28

**SEVENTH CAUSE OF ACTION**  
**(Violation Of California Business And Professions Code § 17200, *et seq.***  
**Unlawful, Unfair And Fraudulent Business Practices)**

64. Plaintiff hereby incorporates by reference the allegations contained in all of the preceding paragraphs of this complaint.

65. Beginning at an exact date unknown to Plaintiff, but within the Class Period, and at all times mentioned herein, Defendant has engaged, and continues to engage, in unfair, unlawful, and fraudulent trade practices in California by engaging in the unfair and illegal business practices detailed above.

66. Defendant knowingly and intentionally misled consumers by continuously and falsely representing during the Class Period that it would not share personal information with third parties without the consent of Plaintiff when in fact it secretly provided such information to third parties as alleged herein.

67. Defendant engaged in these unfair and fraudulent practices to increase its profits. The business practices alleged above are unlawful under § 17200, *et seq.* by virtue of violating § 17500, *et seq.*, which forbids untrue and misleading advertising. These business practices also are unlawful under the SCA, and the business practices also are unlawful under the California Consumer Legal Remedies Act as discussed herein.

68. Defendant's representations regarding personal information were important to Plaintiff and likely to affect his decision to entrust Defendant with his valuable personal information. Plaintiff was injured by Defendant's unfair, unlawful and/or fraudulent acts in that he was forced to relinquish, for free, valuable personal information. Had Plaintiff known that Defendant would share his personal information with third parties, he would not have subscribed to Defendant's service.

69. The aforementioned practices that Defendant has used, and continues to use to its significant gain, also constitute unlawful competition and provide an unlawful advantage over Defendant's competitors, as well as injury to Plaintiff.

1       70. Plaintiff seeks full restitution and disgorgement of monies, as  
2 necessary and according to proof, to restore to Plaintiff the value of all personal  
3 information that Defendant unlawfully converted by means of the unfair and/or  
4 fraudulent trade practices complained of herein, plus interest thereon.

5       71. Plaintiff seeks an injunction to prohibit Defendant from continuing to  
6 engage in the unfair trade practices complained of herein. Cal. Bus. & Prof. Code  
7 § 17203. The acts complained of herein occurred, at least in part, within the Class  
8 Period.

9       72. Plaintiff is further entitled to and does seek both a declaration that the  
10 above-described trade practices are unfair, unlawful, and/or fraudulent, and  
11 injunctive relief restraining Defendant from engaging in any of such deceptive,  
12 unfair, and/or unlawful trade practices in the future. Such misconduct by  
13 Defendant, unless and until enjoined and restrained by order of this Court, will  
14 continue to cause injury in fact to the general public and the loss of money and  
15 property in that Defendant will continue to violate the law, unless specifically  
16 ordered to comply with the same. This expectation of future violations will require  
17 current and future customers to repeatedly and continuously seek legal redress in  
18 order to recoup monies paid to Defendant to which Defendant is not entitled.  
19 Plaintiff has no other adequate remedy at law to ensure future compliance with the  
20 California Business & Professions Code alleged to have been violated herein.

21       73. As a direct and proximate result of such actions, Plaintiff and the  
22 Members of the Class have suffered, and continues to suffer, injury in fact and  
23 have lost money and/or property as a result of such fraudulent, unfair, and/or  
24 unlawful trade practices, and unfair competition in an amount that will be proven  
25 at trial, but which is in excess of the jurisdictional minimum of this Court.

26       74. As a direct and proximate result of such actions, Defendant enjoyed,  
27 and continues to enjoy, significant financial gain in an amount that will be proven  
28 at trial, but which is in excess of the jurisdictional minimum of this Court.



**EIGHTH CAUSE OF ACTION**  
**(Violation Of California Business and Professions Code § 17500, *et seq.***  
**Misleading, Deceptive Or Untrue Advertising)**

75. Plaintiff hereby incorporates by reference the allegations contained in all of the preceding paragraphs of this complaint.

76. Plaintiff asserts this cause of action against Defendant for violations of California Business and Professions Code § 17500, *et seq.* for misleading and deceptive advertising.

77. At all material times, Defendant engaged in a scheme of offering its MySpace service to Plaintiff by way of, *inter alia*, commercial marketing and advertising, the World Wide Web (Internet), product packaging and labeling, and other promotional materials. These materials misrepresented and/or omitted the truth about the extent to which Defendant would share valuable personal information with third parties. Defendant knew, or in the exercise of reasonable care should have known, that these statements were deceptive, misleading, or untrue.

78. Said advertisements and inducements were made within the State of California and come within the definition of advertising as contained in Business and Professions Code § 17500, *et seq.* in that such promotional materials were intended as inducements to subscribe to MySpace and are statements disseminated by Defendant to Plaintiff and were intended to reach Plaintiff. Defendant knew, or in the exercise of reasonable care should have known, that these statements were misleading and deceptive.

79. In furtherance of said plan and scheme, Defendant has prepared and distributed within the State of California *via* commercial marketing and advertising, the World Wide Web (Internet), product packaging and labeling, and other promotional materials, statements that misleadingly and deceptively represent the truth about personal information that MySpace members entrust to MySpace.

1 80. Consumers, including Plaintiff, were among the intended targets of  
2 such representations.

3 81. The above acts of Defendant, in disseminating said misleading and  
4 deceptive statements throughout the State of California to consumers, including  
5 Plaintiff, were and are likely to deceive reasonable consumers, including Plaintiff,  
6 by obfuscating the truth about MySpace's use of their personal information, all in  
7 violation of the "misleading prong" of California Business and Professions Code  
8 § 17500.

9 82. As a result of the above violations of the "misleading prong" of  
10 Business and Professions Code § 17500, *et seq.*, Defendant has been unjustly  
11 enriched at the expense of Plaintiff and the Class. Plaintiff and the Members of the  
12 Class, pursuant to Business and Professions Code § 17535, are entitled to an order  
13 of this Court enjoining such future conduct on the part of Defendant, and such  
14 other orders and judgments that may be necessary to disgorge Defendant's ill-  
15 gotten gains and restore to any person in interest any money paid for Defendant's  
16 services as a result of the wrongful conduct of Defendant.

17 **NINTH CAUSE OF ACTION**  
18 **(Violation of the California Consumer Legal Remedies Act – Cal. Civ. Code**  
19 **§ 1750, *et seq.* – Injunctive Relief Only)**

20 83. Plaintiff hereby incorporates by reference the allegations contained in  
21 all of the preceding paragraphs of this complaint.

22 84. This cause of action is brought pursuant to the California Consumers  
23 Legal Remedies Act, Cal. Civ. Code § 1750, *et seq.* (the "CLRA"). This cause of  
24 action does not seek monetary damages at this point, but is limited solely to  
25 injunctive relief. Plaintiff will amend this Class Action Complaint to seek  
26 damages in accordance with the CLRA after providing the Defendant with notice  
27 pursuant to California Civil Code § 1782.

28 85. Defendant's actions, representations, and conduct have violated, and  
continue to violate the CLRA, because they extend to transactions that are intended

1 to result, or that have resulted, in the sale or lease of goods or services to  
2 consumers.

3 86. Plaintiff is a “consumer” as that term is defined by the CLRA in  
4 California Civil Code § 1761(d).

5 87. MySpace provided “services” to Plaintiff within the meaning of  
6 California Civil Code § 1761(b).

7 88. By engaging in the actions, misrepresentations, and misconduct set  
8 forth in this Class Action Complaint, Defendant has violated, and continues to  
9 violate, § 1770(a)(5) of the CLRA. Specifically, in violation of California Civil  
10 Code § 1770(a)(5), Defendant’s acts and practices constitute unfair methods of  
11 competition and unfair or fraudulent acts or practices in that they misrepresent that  
12 the service has particular uses, benefits, or quantities that it does not have.

13 89. By engaging in the actions, misrepresentations, and misconduct set  
14 forth in this Class Action Complaint, Defendant has violated, and continues to  
15 violate, § 1770(a)(7) of the CLRA. Specifically, in violation of California Civil  
16 Code § 1770(a)(7), Defendant’s acts and practices constitute unfair methods of  
17 competition and unfair or fraudulent acts or practices in that they misrepresent that  
18 the service is of a particular standard, quality, or grade.

19 90. By engaging in the actions, misrepresentations, and misconduct set  
20 forth in this complaint, Defendant has violated, and continues to violate,  
21 § 1770(a)(9) of the CLRA. Specifically, in violation of California Civil Code  
22 § 1770(a)(9), Defendant’s acts and practices constitute unfair methods of  
23 competition and unfair or fraudulent acts or practices in that they advertise services  
24 with intent not to sell them as advertised.

25 91. By engaging in the actions, misrepresentations, and misconduct set  
26 forth in this complaint, Defendant has violated, and continues to violate,  
27 § 1770(a)(16) of the CLRA. Specifically, in violation of California Civil Code  
28 § 1770(a)(16), Defendant’s acts and practices constitute unfair methods of

1 competition and unfair or fraudulent acts or practices in that they represent that a  
2 subject of a transaction has been supplied in accordance with a previous  
3 representation when they have not.

4 92. Plaintiff requests that this Court enjoin Defendant from continuing to  
5 employ the unlawful methods, acts, and practices alleged herein pursuant to  
6 California Civil Code § 1780(a)(2). If Defendant is not restrained from engaging  
7 in these types of practices in the future, Plaintiff and the Class will continue to  
8 suffer harm.

9 93. Therefore, Plaintiff prays for relief as set forth below.

10 **REQUEST FOR RELIEF**

11 WHEREFORE, Plaintiff Mitchell Leong, on behalf of himself and the Class,  
12 request the following relief:

13 A. An order certifying that this action is properly brought and may be  
14 maintained as a class action under Rule 23 of the Federal Rules of Civil Procedure,  
15 that Plaintiff be appointed as Class Representative, and that Plaintiff's counsel be  
16 appointed Class Counsel;

17 B. An award of damages, except as to the CLRA claim as alleged above  
18 in paragraphs 83-92;

19 C. Restitution of all monies unjustly obtained or to be obtained from  
20 Plaintiff and members of the Class;

21 D. Declaratory and injunctive relief;

22 E. An award of reasonable attorneys' fees and costs; and

23 F. Such other relief at law or equity as this court may deem just and  
24 proper.

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands trial of his claims by jury to the extent authorized by law.

DATED: November 3, 2010

**MILBERG LLP**  
JEFF S. WESTERMAN  
SABRINA S. KIM



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SABRINA S. KIM

One California Plaza  
300 S. Grand Avenue, Suite 3900  
Los Angeles, CA 90071  
Telephone: (213) 617-1200  
Facsimile: (213) 617-1975  
E-mail: jwesterman@milberg.com  
skim@milberg.com

**MILBERG LLP**  
ANDREI V. RADO  
arado@milberg.com  
JESSICA J. SLEATER  
jsleater@milberg.com  
One Pennsylvania Plaza, 49th Floor  
New York, NY 10119  
Telephone: (212) 594-5300  
Facsimile: (212) 868-1229

**REESE RICHMAN LLP**  
MICHAEL R. REESE (SBN 206773)  
mreese@reeserichman.com  
875 Avenue of the Americas, 18th Floor  
New York, New York 10001  
Telephone: (212) 579-4625  
Facsimile: (212) 253-4272

*Attorneys for Plaintiff Mitchell Leong*

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

**NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY**

This case has been assigned to District Judge A. Howard Matz and the assigned discovery Magistrate Judge is Charles Eick.

The case number on all documents filed with the Court should read as follows:

**CV10- 8366 AHM (Ex)**

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

=====

**NOTICE TO COUNSEL**

*A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).*

Subsequent documents must be filed at the following location:

**[X] Western Division**  
312 N. Spring St., Rm. G-8  
Los Angeles, CA 90012

**[ ] Southern Division**  
411 West Fourth St., Rm. 1-053  
Santa Ana, CA 92701-4516

**[ ] Eastern Division**  
3470 Twelfth St., Rm. 134  
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

## Name &amp; Address:

MILBERG LLP  
 SABRINA S. KIM (SBN 186242)  
 skim@milberg.com  
 300 S. Grand Avenue, Suite 3900  
 Los Angeles, California 90071  
 Telephone: (213) 617-1200  
 Facsimile: (213) 617-1975

UNITED STATES DISTRICT COURT  
 CENTRAL DISTRICT OF CALIFORNIA

MITCHELL LEONG, individually and on behalf of all  
 others similarly situated,

PLAINTIFF(S)

v.

MYSPACE, INC.,

DEFENDANT(S).

CASE NUMBER

CV10-8366 AHM (EX)

SUMMONS

TO: DEFENDANT(S): MYSPACE, INC.

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached ☐ complaint ☐ \_\_\_\_\_ amended complaint ☐ counterclaim ☐ cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, Sabrina S. Kim \_\_\_\_\_, whose address is Milberg LLP, 300 South Grand Avenue, Suite 3900, Los Angeles, CA 90071 \_\_\_\_\_. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Clerk, U.S. District Court

Dated: 11-3-10

By: **TANYA DURANT**

Deputy Clerk

(Seal of the Court)



1188

[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3)].



UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA  
CIVIL COVER SHEET

<b>I (a) PLAINTIFFS</b> (Check box if you are representing yourself <input type="checkbox"/> ) MITCHELL LEONG, individually and on behalf of all others similarly situated,		<b>DEFENDANTS</b> MYSPACE, INC.,	
<b>(b)</b> Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)  Milberg LLP, Sabrina S. Kim 300 S. Grand Avenue, Suite 3900, Los Angeles, California 90071 Telephone: (213) 617-1200		Attorneys (If Known)	

<b>II. BASIS OF JURISDICTION</b> (Place an X in one box only.)  <input type="checkbox"/> 1 U.S. Government Plaintiff <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)  <input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	<b>III. CITIZENSHIP OF PRINCIPAL PARTIES -</b> For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.) <table style="width:100%; border: none;"> <tr> <td style="width:40%;"></td> <td style="width:10%; text-align: center;"><b>PTF</b></td> <td style="width:10%; text-align: center;"><b>DEF</b></td> <td style="width:30%;"></td> <td style="width:10%; text-align: center;"><b>PTF</b></td> <td style="width:10%; text-align: center;"><b>DEF</b></td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business in this State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>		<b>PTF</b>	<b>DEF</b>		<b>PTF</b>	<b>DEF</b>	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
	<b>PTF</b>	<b>DEF</b>		<b>PTF</b>	<b>DEF</b>																				
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Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																				

<b>IV. ORIGIN</b> (Place an X in one box only.) <input checked="" type="checkbox"/> 1 Original Proceeding <input type="checkbox"/> 2 Removed from State Court <input type="checkbox"/> 3 Remanded from Appellate Court <input type="checkbox"/> 4 Reinstated or Reopened <input type="checkbox"/> 5 Transferred from another district (specify): <input type="checkbox"/> 6 Multi-District Litigation <input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judge	
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<b>V. REQUESTED IN COMPLAINT:</b> JURY DEMAND: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No (Check 'Yes' only if demanded in complaint.)	
<b>CLASS ACTION under F.R.C.P. 23:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<b>MONEY DEMANDED IN COMPLAINT: \$</b> _____

<b>VI. CAUSE OF ACTION</b> (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.) 18 U.S.C. § 2701 et seq.; Bus. & Prof. Code §§ 17200, et seq. and §§ 17500, et seq.; Cal. Civ. Code §§ 1750, et seq.	
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<b>VII. NATURE OF SUIT</b> (Place an X in one box only.)					
<b>OTHER STATUTES</b> <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Act <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Info. Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes	<b>CONTRACT</b> <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise <b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>TORTS</b> <b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Fed. Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury-Med Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus-Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<b>TORTS</b> <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability <b>BANKRUPTCY</b> <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 American with Disabilities - Employment <input type="checkbox"/> 446 American with Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General Habeas Corpus <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus/Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <b>FORFEITURE/PENALTY</b> <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety /Health <input type="checkbox"/> 690 Other	<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609

CV10-8366

FOR OFFICE USE ONLY: Case Number: \_\_\_\_\_

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA  
CIVIL COVER SHEETVIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? ☒ No ☐ Yes

If yes, list case number(s): \_\_\_\_\_

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? ☒ No ☐ Yes

If yes, list case number(s): \_\_\_\_\_

## Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) ☐ A. Arise from the same or closely related transactions, happenings, or events; or
- ☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or
- ☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or
- ☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

## IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named plaintiff resides.

☐ Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	San Mateo

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named defendant resides.

☐ Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles	

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH claim arose.

Note: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles	San Mateo

\* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR PRO PER): Sabrina Kim Jones Date November 3, 2010

**Notice to Counsel/Parties:** The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

## Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))